

Marc Bungenberg, August Reinisch (eds.). CETA Investment Law: Article-by-Article Commentary. Baden-Baden: Nomos, 2022, 608 pp.

On 21 September 2017, the Comprehensive Economic and Trade Agreement (CETA) between the European Union and Canada entered into force provisionally. The road to the signature itself was not easy. First, shared competence in the fields of portfolio investment and investor-state dispute settlement (ISDS) meant that it is a mixed type of an agreement which needs to be ratified by all EU Member States. The process proved that the European Commission exercising its competence over foreign direct investment might be more difficult than gaining it. Second, the final steps towards the signature were deeply politicised by the Transatlantic Trade and Investment Partnership Agreement (TTIP) negotiated at the same time with the United States (and in the end unsuccessfully).

For the EU, the signature of the CETA is considered a milestone in its trade and investment policy. The agreement represents the first material outcome of the shift, which commenced in 2006 by the EU admitting its re-orientation of its Common Commercial Policy from multilateral negotiations under the framework of the World Trade Organisation (WTO) to regional and bilateral ones.¹ The EU Commissioner for Trade Cecilia Malmström stated on the occasion of CETA entering provisionally in force that “[i]t helps us shape globalisation and the rules that govern global commerce.”² The signature of the CETA was also a crucial step in the EU’s ascendancy in asserting exclusive competence over investment policy at the treaty-making level.

The CETA investment chapter which is an important part of a new type of trade agreement between Canada and the EU thus deserves to be carefully analysed and this is also what the *CETA Investment Law: Article-by-Article Commentary* attempts to provide. The volume is edited by well recognised authorities in the field of European investment law Marc Bungenberg and August Reinisch, who successfully assembled not only a group of experts with different professional backgrounds in academia and arbitration, but also Member States’ and European Commission’s officers. Together, they created a work of great quality, the very first in-depth, article-by-article commentary.³

It first provides background information on the CETA, particularly focusing on its economic motivations, as well as developments of EU and Canadian investment policies and the history of negotiations. Subsequently, it goes on to explore each provision of the investment chapter (8.1 – 8.45), from definitions and scope over the rules on the entry of investments to protection standards and the dispute settlement mechanism

This is very useful as the European Union adopted a new approach from several areas of investment protection to ISDS trying to tackle the pressing issues of today’s investment arbitration. Under this policy, ISDS is set to be replaced by a bilateral investment court system (ICS) and, consequently by a multilateral investment court. Authors approach those new provisions objectively, providing a balanced view, clearly distinguishing themselves from biased criticism which is frequently expressed by some members of the arbitration community as well as by NGOs against the EU proposals.

The commentary is also an important study about the EU investment policy because of the role of the CETA for other investment negotiations. The EU has steadily progressed at varying paces with

¹ EUROPEAN COMMISSION. *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Global Europe – Competing in the world – A contribution to the EU’s Growth and Jobs Strategy*. COM (2006) 567, 4. 10. 2006.

² EUROPEAN COMMISSION. *Press release: EU–Canada trade agreement enters into force*. Brussels, 20 September 2017.

³ It is not however the study of such focus. See MBENGUE, M. M., SCHACHERER, S. (eds.). *Foreign Investment Under the Comprehensive Economic and Trade Agreement (CETA)*. Cham: Springer, 2019.

third countries in Asia by beginning trade and investment negotiations with Singapore, Vietnam, Myanmar, China, India, Thailand, the Philippines, and Indonesia, among others. Moreover, the EU already persuaded the first countries in this region to accept its novel approach to investment protection. As such, it offers deeper understanding of those new agreements as well.

In addition, this book was published at the time of the start of the new CETA controversy. On 29 August 2022, the European Commission published a statement “on clarifications discussed with Germany regarding investment protection in the context of the CETA agreement.” The purpose of a new text is said to clarify certain provisions in the CETA, particularly the concepts of ‘indirect expropriation’ and ‘fair and equitable treatment’ of investors which aim is to ensure that the parties can regulate in the framework of climate, energy and health policies. The CETA investment chapter is thus a truly living document, drawing a lot of attention even after 5 years from the signature of the agreement.

On a critical note, the authors perhaps incorporated too narrow reading of the CETA investment chapter as the chapter does not exist in isolation from other parts of the agreements. For instance, there are the preamble or sustainable development chapter, the Joint Interpretative Instrument adopted by the EU and Canada (mainly addressing the concerns related to the ICS and the potentially negative effects of the agreement on the government’s right to regulate public policy spheres) and 38 statements and declarations of the European Commission, the Council and the Member States, with some of them less or more relevant for the investment chapter and its implementation.

To conclude, the volume offers a clear and comprehensive discussion of the complete content of the CETA investment chapter, considering relevant arbitral awards and academic writings. The authors provide rich background information which allows readers to have a deep understanding of every provision. This is needed more than ever as investment protection and dispute settlement rules have become controversial components of trade and investment agreements.

Ondřej Svoboda*

* JUDr. et Bc. Ondřej Svoboda, Ph.D. is a Researcher at the Department of International Law of Charles University Law Faculty in Prague, Czech Republic, and a Deputy Head of Political and Economic Section at the Embassy of the Czech Republic in Tokyo, Japan, e-mail: ondrej.svobod@gmail.com. The views expressed in this article are only those of the author. They do not purport to reflect the opinions or views of the Ministry of Foreign Affairs of the Czech Republic. ORCID: 0000-0002-3856-312X. The present book review was created under the Cooperatio Research Project of Charles University, research area Law.